

APR 10 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JESUS SARMIENTO-HERNANDEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74150

Agency No. A39-286-470

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 5, 2006**

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Jesus Sarmiento-Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") decision summarily affirming without opinion an immigration judge's order denying his motion to reopen proceedings in which he was ordered removed in absentia. We lack

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction because the petition for review was untimely and therefore dismiss the petition.

The BIA's decision was issued on July 19, 2004. This court received Sarmiento-Hernandez's petition for review on August 19, 2004, thirty-one days later. 8 U.S.C. § 1252(b)(1) states: "The petition for review must be filed not later than 30 days after the date of the final order of removal." Sarmiento-Hernandez's petition should therefore have been received no later than August 18, 2004. *See Sheviakov v. INS*, 237 F.3d 1144, 1148 (9th Cir. 2001).

PETITION FOR REVIEW DISMISSED.